

REMARKS

In the Office Action, claims 1-21 were rejected. By the present Response, claims 9, 13-14, and 17 are amended, claim 11 is canceled, and claim 22 is added. Upon entry of the amendments, claims 1-10 and 12-22 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are requested.

Rejection under 35 U.S.C. § 101

With respect to the rejection of claim 17 under § 101 as being directed to non-statutory subject matter, the Examiner stated, “The body of the claim recites only instructions and the instructions appear to be not executed by at least one computer processor” While Applicants do not necessarily agree that claim 17, as originally presented, was directed to non-statutory subject matter, Applicants have amended claim 17 to recite, “A computer-readable storage medium containing an executable computer program, wherein the computer program is adapted to enable a processor-based device to” Because claim 17, as amended, is directed to a computer-readable storage medium containing an executable computer program (at least a manufacture under 35 U.S.C. § 101), Applicants respectfully request withdrawal of the rejection of claim 17 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-11 and 13-21 under 35 U.S.C. § 102(a) as being anticipated by Babula, U.S. Publication 2003/0061071 (hereinafter referred to as “Babula”). A *prima facie* case of anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. *In re Donohue*, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985). Based on this binding legal precedent, Applicants respectfully traverse this rejection.

In the present case, Babula does not anticipate Applicants' claims under 35 U.S.C. § 102 because every element of the claims is not shown in Babula. For example, claim 1 recites that the application service provider searches a solution database "using the data from the medical device *and* the historic data for the medical device" (emphasis added). Independent claims 9, 13, 14, 17, 18 and 21 recite generally similar subject matter. With respect to one embodiment, the present application notes: "The technique comprises using the historic data found as a result of the search of the historic data database to automatically search the database of potential solutions." Application, page 2, lines 4-6. In other words, the application service provider may use the historic data of the device (and/or related devices) to refine its search of the solution database.

In contrast, Babula does not appear to teach "using the data from the medical device and the historic data for the medical device" to search a solution database. In the Office Action, the Examiner relied on paragraph 0009 of Babula as disclosing this claimed subject matter. *See* Office Action, page 4. However, upon review, it appears that paragraph 0009 of Babula fails to disclose using data from the historical database as an input to search the solution database. Consequently, a *prima facie* case of anticipation based on the Babula reference has not been established for independent claims 1, 9, 13, 14, 17, 18 and 21, and their dependent claims. Accordingly, Applicants respectfully request that the Examiner either provide an explanation as to why the Babula reference is believed to contain such a teaching, or withdraw the present rejection under 35 U.S.C. § 102.

Rejection under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Babula as applied to claims 1-11 and 13-21 in view of Schramm-Apple et al., U.S. Publication 2003/0217159 (hereinafter referred to as "Schramm-Apple"). For at least the reasons noted above with regard to independent claim 9, from

which claim 12 depends, Applicants assert that the cited references, whether considered separately or in a hypothetical combination, do not disclose *all* of the claimed features of claim 12. Therefore, Applicants request that the Examiner withdraw the rejection of claim 12.

New Claim

As noted above, Applicants added new claim 22. This new claim adds no new matter and is fully supported throughout the specification. Accordingly, Applicants respectfully request consideration and allowance of claim 22.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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